

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, (Court – II)  
KOLKATA**

*Miscellaneous Application (IBC) No. 2/2022*

*Company Petition No. 170/2017*

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.*

**In the matter of:**

(1) RBL Bank Ltd.

... Financial Creditor

*-Versus-*

(2) MBL Infrastructure Ltd.

... Corporate Debtor

*-And-*

**In the matter of:**

(1) Telecommunications Consultants India Limited (TCIL).

... Applicant

*-Versus-*

(2) MBL Infrastructure Ltd.

... Respondent

**Date of hearing: 19/10/2023**

**Date of pronouncing the order: 08/11/2023**

**Coram:**

Smt. Bidisha Banerjee : Member (Judicial)

Shri Arvind Devanathan : Member (Technical)

**Appearances (via video conferencing/physically):**

For applicant in IA/1102 & 1178/2022 : Mr. Ratnanko Banerjee. Sr. Adv.

& IA/511/2023 & respondent in : Mr. Shaunak Mitra, Adv.

MA/2/2022 : Ms. Neha Somani, PCS

For applicant in MA/2/2022 : Mr. Nikhilesh Krishnan, Adv.

**ORDER**

**Per: Arvind Devanathan, Member (Technical)**

1. Heard. Ld. Counsel for the parties.
2. This application has been preferred to seek the following reliefs, inter alia: -
  - (a) Either set aside the resolution plan dated 29.06.2017 as approved against applicant/TCIL or it be directed that claim of TCIL arising out of NHAI Contract, Package 9 Contract & HSRDC Contract as per Annexures A-8 to A-10, are part of resolution plan as approved.
  - (b) It be declared/held that resolution plan as approved of MBL being ineligible and not maintainable and being hit by Section 29 A (h) of IBC Code as held by the Hon’ble Supreme Court in judgment dated 18.01.2022 passed in the said Civil Appeal No. 8411 of 2019, cannot be said to extinguish claims of TCIL or bar initiation or continuance of proceedings in respect to a claim of TCIL, which is not part of the resolution plan as per Section 31(1) of IBC / ruling of Ghanshyam Mishra (supra).
  - (c) Cost of the present petition be awarded to TCIL as against MBL.
3. **Briefs facts of the case are as under: -**
  - (a) Telecommunications Consultants India Limited (in short “TCIL”), the applicant herein has filed this application seeking to set aside resolution plan dated 29.07.2017 in respect of MBL Infrastructure India.
  - (b) The order of this Tribunal approved in the resolution plan was challenged by one of the financial creditors before the Hon’ble Supreme Court and *vide* ruling dated 18.01.2022. The Apex Court held that the resolution plan is ineligible, but refused interfere with the approved resolution plan.
  - (c) On 03.06.2005, NHAI awarded contract to TCIL-MBL-Joint Venture for widening and strengthening of existing National Highway – 37 in Assam,

from lane 2 to lane 4 from KM. 183.00 to KM 163.895 of Sonapur to Guwahati Section, on the East West corridor under Phase – II programme of NHDP package no. – EW II (Package AS – 3 / NHAI Contract) project. ON 27.12.2005 TCIL and MBL entered into a contract for package AS – 3 for execution of work, with MBL as the sub-contractor. During the pendency of the said agreement, Madhya Pradesh Road Development Corporation Ltd. (MPRD) awarded a contract to MBL. Thereafter, one tripartite Agreement dated 22.02.2008 was entered into between TCIL, MBL and M/s. SMH Infrastructure Pvt. Ltd. (Contract for Package 9).

- (d) On 21.08.2008, Haryana State Roads & Brides Development Corporation Ltd. (HSRDC) awarded work for construction of 144 Nos. Type – V and 24 Nos. Type VI Houses in the Campus of Rajiv Gandhi Power Project at Khedar, Hissar District. Subsequently, on 17.09.2008 an agreement entered into between TCIL and MBL, for MBL to execute the work awarded by HSRDC on a back-to-back basis. The agreement was amended subsequently on 31.08.2008.
- (e) Thereafter on 09.08.2013, arbitration was invoked in the NHAI Contract dated 03.06.2005. Award for the same was passed on 01.05.2018. Challenge to the award vide OMP (Comm) No. 485/2018 and is pending disposal. On 27.11.2013, Arbitration was also invoked in the HSRDC Contract dated 21.08.2008. Award was passed in the said matter on 20.01.2020. The applicant has challenged judgment dated 10.02.2021 passed by the Hon’ble High Court of Delhi, wherein the said Award was partly set aside / modified, by way of applicant in FAO (OS) (Comm) No. 58/2021.
- (f) On 26.07.2014, arbitration was also invoked in the Contract for package 9. Proceedings in the said arbitration were stayed by the Supreme Court in SLP (C) No. 7708/2015.
- (g) Thereafter, on 30.03.2017, NCLT Bench, Kolkata passed an order initiating insolvency proceeding against MBL and IRP was appointed.

Subsequently, MBL's resolution plan dated 29.06.2017, was released, authored by promotor, Mr. A. K. Lakhotia. On 18.04.2018, NCLT Bench, Kolkata approved the said resolution plan dated 29.06.2017. Bank of Baroda, one of the financial creditors of MBL, challenged the order by NCLT Kolkata before NCLAT on 16.08.2019, which was dismissed. The same was thereafter challenged by Bank of Baroda before the Hon'ble supreme Court and on 25.11.2019 the order dated 16.08.2019 approving the resolution plan was stayed. The Hon'ble Supreme Court passed a ruling on 18.01.2022 in the matter of Bank of Baroda v. MBL Ltd., holding the resolution plan to be ineligible, but refused to interfere with the approved resolution plan.

(h) Despite appointment of the IRP, Respondent, i.e., MBL did not apprise either the Applicant or the Arbitral Tribunals in the pending proceedings in NHAI Contract and HSRDC Contract and in SLP (C) No. 7708 of 2015 in Package 9 Contract of the said insolvency proceedings, and kept representing itself in the proceedings in violation of Section 17, 18 and 20 of the IBC Code. The Applicant being situated in Delhi, was unaware of the IBC proceedings and could not file its claims before the IRP.

4. The rival contentions were noted and the decisions were considered.
5. Ld. Counsel applicant submitted that the Hon'ble Supreme Court in Civil Appeal No. 8411 of 2019 between Bank of Baroda and MBL Infrastructure Ltd. has found several irregularities observed that the plan submitted by the Respondent No. 3 in the above before the Hon'ble Supreme Court ought not to have been entertained. Therefore, it is the contention of the Ld. Counsel that the resolution plan should be declared as ineligible for approval and consequently the approval granted should be recalled.
6. Ld. Counsel for the respondent submits that the plan has been approved in the year 2017 and the same has already been implemented and, therefore, the question of recalling approved resolution plan does not arise.

7. Ld. Counsel submits that the claims of the applicant arising out of the NHAI Contract, Package 9 contract and HSRDC Contract, have been made part of the resolution plan approved.

**8. Analysis and Findings: -**

(a) First of all, we are of the view that Tribunal cannot recall its own order approving the resolution plan, more so when approval was granted in 2017 has already been implemented.

(b) We find that in the Supreme Court judgement relied by the Ld. Counsel in Appeal Paras 61, 62, 63 & 64 of the order has observed as under: -

*61. Though the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.*

*62. Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18.04.2018, and as of now the Respondent No. 1 is an on-going concern. Though, the Respondent No. 11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent No. 7. The Respondent No. 7 and the Respondent No. 11 did not choose to challenge the order of the Appellate Tribunal.*

*63. We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent No. 1. Now, about Rs. 300 crores have also been approved by the shareholders to be raised by the Respondent No. 1. It is stated that about Rs. 63 crores have been infused*

*into the Respondent No. 1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No. 1 in the nature of construction activities which are at different stages.*

*64. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No. 1.*

9. In view of the observations made above even the Hon'ble Apex Court choose not to distribute the resolution plan.
10. In view of the above, we find no merit in the application seeking to set aside the resolution plan dated 29.06.2017 or declare the resolution plan as ineligible.
11. Accordingly, this application stands **dismissed**.

**(Arvind Devanathan)**  
Member (Technical)

**(Bidisha Banerjee)**  
Member (Judicial)

**Order signed on this, the 08<sup>th</sup> day of November, 2023.**

*AR.*